Office - Supreme Court, U.S.
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ALEXANDER L. STEVAS
CLERK

No. 80-1305

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ALFRED L. SNAPP & SON, INC., *et al.*,
Petitioners,

v.

COMMONWEALTH OF PUERTO RICO
On the relation of
PEDRO BAREZ, SECRETARY, DEPARTMENT OF
LABOR AND HUMAN RESOURCES,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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REPLY BRIEF FOR PETITIONERS

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WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

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REPLY BRIEF FOR PETITIONERS

Petitioners Alfred L. Snapp & Son, Inc., *et al.*, submit this Reply Brief in response to the Brief of Respondent, Brief of Amicus Curiae Commonwealth of Massachusetts, *Amicus Curiae* Brief of the State of New York, Joined by the Commonwealth of Pennsylvania, in Support of Respondent, and Brief for Migrant Legal Action Program, Inc., *et al.*

ARGUMENT

I. The Commonwealth Has Given a Distorted Explanation of the Events Prior to 1978.

The Commonwealth has presented a distorted history of events prior to 1978 in an attempt to color the nature of its case. The Commonwealth claims that ". . . it has attempted since 1976 to refer agricultural workers to East Coast apple growers through the Employment Service System" but that "[t]hese attempts were unsuccessful because of resistance by the growers to the employment of Puerto Rican workers . . . During 1977, because of grower litigation over Puerto Rican Public Law No. 87, only ninety-three Puerto Ricans were referred to East Coast growers." Brief for Respondents, at 4-5 (footnote omitted).[1]

The history of Puerto Rico's attempts to refer Puerto Rican workers to the East Coast apple harvest actually begins in 1975. In that year, representatives of apple growers in 10 East Coast states "attempted to negotiate a contract with the Puerto Rican authorities but were unable to reach agreement on all of the terms." *Galan v. Dunlop*, 411 F. Supp. 268, 270 (D.D.C. 1975), *appeals dismissed as moot and remanded with order to vacate sub nom. Galan v. Usery*, 551 F.2d 467 (D.C. Cir. 1977) (unpublished). As a result, the U.S. Secretary of Labor "determined that Puerto Rican workers were not available for the apple growers" and certified the growers' needs for temporary foreign workers. *Id.* On the very eve of the apple harvest, a group of Puerto Rican agricultural workers filed suit seeking to enjoin the U.S. Secretary of Labor and the Commissioner of Immigration and Naturalization from permitting the

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[1] This theme is also echoed in the *Amicus Curiae* Brief of the State of New York which refers to "repeated resistance over several years to Puerto Rico's efforts to secure jobs for its migrant workers in the annual east coast apple harvest. . . ." *Id.* at 7.

growers to bring in foreign workers.[2] *Id.* The U.S. District Court for the District of Columbia, however, held that the U.S. Secretary of Labor had a "clear factual basis . . . to certify the need for the importation of foreign farm workers. . . ." *Id.* at 271. The court noted that ". . . the laws of Puerto Rico make it difficult for its workers to enjoy the benefits of the interstate clearance system . . . Puerto Rico is the only participating jurisdiction in the interstate clearance system which has sought to intervene in the employer-employee relationship." *Id.* Thus, in 1975, the decision to consider Puerto Rican workers not "available" was made by the U.S. Secretary of Labor, the litigation challenging that decision was brought by Puerto Rican farmworkers, and the court hearing the case upheld the U.S. Secretary of Labor's decision.

In 1976, apple grower associations negotiated with the Commonwealth about hiring as many as 1,000 Puerto Ricans and actually hired 613 Puerto Rican workers. Brief for Respondent, at 4-5. In 1977, the U.S. Secretary of Labor again took the position that Puerto Ricans would not be considered "available" for purposes of certification as long as the requirements of Puerto Rico Public Law 87 remained in effect. A number of Puerto Rican workers brought suit against the Secretary of Labor of Puerto Rico, the U.S. Secretary of Labor, and the Commissioner of Immigration and Naturalization, this time in the U.S. District Court for the District of Puerto Rico. *Hernandez Flecha v. Quiros*, 567 F.2d 1154 (1st Cir. 1977), *cert. denied*, 436 U.S. 945 (1978).[3] The district court issued a preliminary injunc-

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[2] The *Galan* case was brought on behalf of the Puerto Rican workers by the Migrant Legal Action Program, Inc., the Puerto Rico Legal Services, and Mid-Hudson Valley Legal Services (now Farmworker Legal Services of New York, Inc.).

[3] The *Flecha* case was brought on behalf of the Puerto Rican workers by the Puerto Rico Legal Services and the Migrant Legal Action Program, Inc., who also brought the *Galan* case.

tion requiring the U.S. Secretary of Labor to declare Puerto Rican workers available with the full protection of Puerto Rico Public Law 87, but, on appeal, the First Circuit stayed the injunction and then reversed on the merits. *Id.* The First Circuit concluded that Puerto Ricans, because of the special demands of Public Law 87, were not to be considered "available" domestic workers when determining the number of alien workers needed for migrant agricultural work. This determination was made by the U.S. Secretary of Labor, was challenged in court by Puerto Rican workers, and was upheld by the First Circuit. Although the Farm Labor Executive Committee, representing apple growers in 10 East Coast states, intervened as a defendant in the *Galan* case in 1975 and filed an *amicus curiae* brief with the First Circuit in the *Flecha* case in 1977, neither case could be characterized as "grower litigation over Puerto Rico Public Law No. 87."[4] Brief for Respondent, at 5.

II. The Commonwealth Exaggerates Its Role in the Temporary Foreign Labor Certification Program Which Is Severely Circumscribed by the Regulations.

The Commonwealth contends that the Puerto Rico Secretary of Labor has a "special duty" to guarantee that growers exempted from Puerto Rico Public Law 87 comply with the conditions set forth in job offers circulated

[4] The U.S. Secretary of Labor refused to certify the growers' needs for temporary foreign workers on the ground that the preliminary injunction issued in the *Flecha* case on August 15, 1977 barred such action. The federal court in Puerto Rico stayed its preliminary injunction on August 23, 1977 (only to reinstitute it later), but the U.S. Secretary of Labor still refused to certify the growers. A number of apple grower associations and individual apple growers filed suit against the U.S. Secretary of Labor on August 24, 1977 seeking a mandatory temporary restraining order compelling the Secretary to certify the growers' needs for temporary foreign workers. *Frederick County Fruit Growers Association, Inc., et al. v. Secretary of Labor Marshall*, No. 77-0104(H) (W.D.Va., filed Aug. 24, 1977), *appeal dismissed as moot* (4th Cir. 1977), *dismissed as moot* (W.D.Va., May 3, 1978).

to Puerto Rico through the Interstate Clearance System. Brief for Respondent, at 17. The Commonwealth, however, points to no federal statute or regulation which imposes such a "special duty" on the Puerto Rican Secretary of Labor for the simple reason that there is none it can point to. Neither the Immigration and Nationality Act nor any regulation promulgated thereunder assigns any role in administering the temporary foreign labor certification program to the Commonwealth of Puerto Rico, responsibility resting solely in the Commissioner of Immigration and Naturalization and the U.S. Secretary of Labor. *See* 8 C.F.R. §§ 2.1 and 214.2(h)(3) (1978) and 20 C.F.R. Part 655 (1978). Since the U.S. Department of Labor's temporary foreign labor certification regulations require the use of the Interstate Clearance System created pursuant to the Wagner-Peyser Act, 20 C.F.R. § 655.205(a) (1978), the Commonwealth and other labor supply states play an indirect role in the temporary foreign labor certification process. Neither the Wagner-Peyser Act, 29 U.S.C. §§ 49-49k, nor the regulations promulgated thereunder, 20 C.F.R. Parts 653 and 658 (1978), however, assign an active role to a labor supply state in the investigation of employee complaints or in the enforcement of the Wagner-Peyser Act regulations.[5] In fact, the opposite is true. The Employment Service regulations clearly provide that, whenever a state agency receives an employee complaint against

[5] *Amici curiae* Migrant Legal Action Program, Inc. ("MLAP"), *et al.* suggest that ". . . the States can be said to enter implied contracts that by analogy to the express contracts of foreign governments, are tripartite, involving growers, workers, and the workers' government." Brief for MLAP, *et al.*, at 31-32 n.22. The Wagner-Peyser Act regulations clearly state, however, that ". . . neither the ETA nor the State agencies are guarantors of the accuracy or truthfulness of information contained in job orders submitted by employers. Nor does any job order accepted or recruited upon by the [Employment Service] constitute a contractual job offer *to which the ETA or a State agency is in any way a party.*" 20 C.F.R. § 653.108(b)(1) (1978). (Emphasis added.)

an employer in another state, it shall forward the complaint to the state where the work was performed. 20 C.F.R. § 658.412(d) (1978).

In sharp contrast to the "special duty" which it claims in this case, the Commonwealth has argued exactly the opposite when it has been sued by Puerto Rican workers. In *Vasquez v. Ferre*, 404 F. Supp. 815 (D.N.J. 1975), Puerto Rican migrant workers filed suit against the Puerto Rican Department of Labor, various Puerto Rican officials, and officials of the State of New Jersey for alleged violations of the Wagner-Peyser Act, the Civil Rights Act of 1871, and Puerto Rico Public Law 87. It was "the plaintiff's contention that the commonwealth defendants were required by the [Wagner-Peyser] Act and regulations to ascertain whether the New Jersey employees would provide adequate housing and to refuse to refer the Puerto Rican workers to the interstate clearance system unless the minimum standards were met." *Id.* at 820. The Commonwealth pointed out to the court that the Puerto Rico Department of Labor voluntarily carried out a program to provide social services to Puerto Rican farmworkers and attempted to maintain compliance by farmers with their contracts with the workers but, "[i]nsofar as the Wagner-Peyser Act is concerned, this voluntary effort is wholly fortuitous and cannot create obligations under statutes and regulations which do not require it." [6] In

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[6] *Vasquez v. Ferre*, 404 F. Supp. 815 (D.N.J. 1975), Memorandum in Support of Motion for Judgment on the Pleadings (February 5, 1975), at 11. The Puerto Rico Department of Labor further stated that

> On their face, the Wagner-Peyser regulations only apply to the state in which workers are to be employed. And this is as it should be. It would be wholly unreasonable to require a state to inspect housing conditions on the thousands of farms in the many and distant jurisdictions to which its citizens might migrate, particularly when the states receiving these workers plainly have the duty to do so. Indeed, officials of the state from which the workers have traveled would not even have civil authority to enter the housing facilities in other jurisdictions. The argument that the Wagner-Peyser regulations require

granting the Puerto Rico Department of Labor's motion for judgment on the pleadings, the district court held that "the Wagner-Peyser Act and regulations thereunder impose no duty upon the commonwealth defendants to ascertain the housing conditions on the New Jersey farmers, or to refuse to fill the requests for Puerto Rican workers" and that "[n]either the Wagner-Peyser Act nor Puerto Rico Law 87 imposes a duty upon the Puerto Rican officials to enforce the federal statutory rights of migratory workers who accept employment in New Jersey." *Id.* at 821, 824.

III. The Commonwealth Confuses the Assertion of Legal Defenses with the Unavailability of Legal Remedies.

The petitioners' contention that the Puerto Rican workers allegedly aggrieved have adequate remedies avail-

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> Puerto Rican officials to inspect all housing facilities for migrant workers in New Jersey is nothing short of absurd . . .
>
> No state in the union follows its migrant workers to the states in which they find employment. Puerto Rico, a jurisdiction which is poorer than any state and which is located more than a thousand miles from the farm areas where its workers are employed, is the only government which makes any attempt to follow its workers. With its limited manpower and financial resources, it cannot hope to duplicate what an adequate state enforcement program would do in the vast areas of the United States to which Puerto Rican farm workers migrate annually. This is particularly true since an adequate inspection requires repeat visits, as facilities deteriorate from use and occupancy. It would be a perverse result indeed if Puerto Rico's voluntary program were held to create under the federal regulations a duty to which no state in the union is subject.
>
> The Wagner-Peyser regulations clearly and unambiguously place the responsibility for inspecting housing facilities on the states in which migrant laborers are to be employed. To hold that these facilities must also be inspected by officials from each state or other jurisdiction whose workers might occupy the housing would be terribly burdensome, wasteful and unnecessary. If the State of New Jersey had done its job well, plaintiffs would have no complaint.

Id. at 11-12 (footnote omitted).

able to them and have demonstrated their ability to litigate the issues themselves is attacked by the Commonwealth on four grounds. The Commonwealth argues that (1) the award of money damages in individual actions brought by the workers would not achieve the same end as the injunctive relief sought by the Commonwealth, (2) the petitioner apple growers have not conceded that Puerto Rican courts have personal jurisdiction over them, (3) some apple grower defendants have opposed class action certification in cases brought by Puerto Rican workers, and (4) the Employment Service Complaint System established by the U.S. Department of Labor is not designed to handle allegations of harmful industry-wide conduct.[7] Brief for Respondent, at 23-27.

It is true that the suits filed in the local courts of Puerto Rico have sought only money damages, Brief for Petitioners, at 29-30 n.13—a decision over which the petitioners have no control—but the workers are not limited to such relief. In fact, in the purported class action filed against certain New York apple growers and

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[7] This line of argument—that the Puerto Ricans have no available judicial or administrative remedies unless they can bring class action suits in Puerto Rican courts and obtain injunctive relief—finds its ultimate expression in the Brief of MLAP, *et al.* According to MLAP, the 78 cases involving 220 workers filed in Puerto Rico's courts as a result of the 1978 apple harvest "do not encompass the complaints of hundreds more potential plaintiffs." Brief for MLAP, at 46. MLAP further notes that "administrative proceedings have also yielded no relief for Puerto Rican migrant workers, who have been unable to present proof establishing violations to the satisfaction of mainland State investigators. Only a few of the negative determinations have been appealed to the Department of Labor." *Id.* at 47 n.32. Once, a person's failure to file a lawsuit might have meant that he had no grievance, and a person's failure to prove his allegations of wrongdoing might have meant that there was no wrongdoing. Now, however, the fact that a substantial majority of the Puerto Ricans who worked in the 1978 apple harvest have not filed suits against their employers and the fact that those Puerto Ricans who filed complaints with the Complaint System were unable to present proof substantiating their allegations are supposed to imply a lack of adequate remedies.

others in the U.S. District Court for the Southern District of New York, *Juan Valderrama Rios v. Secretary of Labor Donovan*, Civ. No. 79-5711 (S.D.N.Y., filed October 22, 1979), the plaintiff migrant workers have asked the court to "enjoin said [apple grower] defendants from future violations." *Id.*, Second Amended Complaint ¶ 161. The *Rios* case, incidentally, was brought on behalf of the migrant workers by the Farmworker Legal Services of New York, Inc., one of the 10 legal service organizations which has filed an *amicus curiae* brief with the Court. The broad injunctive relief sought by the migrant workers in the *Rios* case certainly belies the modest claims made by *amici curiae* concerning the kind of injunctive relief obtainable by workers. *See* Brief for Migrant Legal Action Program, Inc., *et al.*, at 53-54.

The fact that some of the apple grower petitioners have chosen not to voluntarily subject themselves to the jurisdiction of Puerto Rico's courts does not mean that the Puerto Rican workers are without access to a forum in which to present their grievances. The final determination of whether those growers sued in the courts of Puerto Rico were subject to the personal jurisdiction of Puerto Rico's courts is yet to be made.[8] If the growers ultimately lose the personal jurisdiction issue, the Puerto Rican workers will be able to sue growers in Puerto

[8] The basic issue involved is whether the mere referral of a grower's clearance order to the Commonwealth of Puerto Rico by the U.S. Department of Labor, absent any other contacts by the grower, constitutes the transaction of business under Puerto Rico's long-arm statute or satisfies the "minimum contacts" requirement of *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945). Recently, cases have been filed in the local courts of the Commonwealth of Virginia and the State of New York to enforce some of the default judgments obtained in the Puerto Rico courts. Approximately 40 cases have been filed in the General District Court for Frederick County, Virginia. *See, e.g., Miquel Laboy Colon v. Ray D. Rinker Estate*, No. C 82-00396. Two cases have been filed in the Supreme Court of Ulster County, New York, on behalf of 19 Puerto Ricans. *Ramon Luis Escabi Delgado, et al. v. Altamont Farms, Inc.* and *Nelly Rios, et al. v. Altamont Farms, Inc.*

Rican courts; if the growers ultimately win the personal jurisdiction issue, the Puerto Rican workers could always sue in the courts of the states where the employment contracts were performed, as the Puerto Rican migrant workers have done in the case of *Rios v. Donovan, supra*, and the Commonwealth has done in this case and the *Bramkamp* case.[9] Moreover, the jurisdictional issue, however it is finally resolved, does not limit the workers' access to the Employment Service Complaint System.

Similarly, the fact that the growers sued in purported class action suits have opposed class certification does not mean that the Puerto Rican workers have no adequate legal remedies available. The Southern District of New York, where the only purported class action is pending,[10] has not yet ruled on the class certification issue—either to grant or deny class status. Furthermore, the defendant New York growers' opposition to class certification in the *Rios* case is entirely consistent with the petitioners' opposition to the Commonwealth's assertion of *parens patriae* standing in this case. The Commonwealth's assertion that "[c]ounsel in *Valderrama Rios* argues that the action 'involves an aggregation of individual claims that particular workers may have against particular growers' . . . ," Brief for Respondent, at 26, nearly matches the petitioners' statement in this case that "[i]t is clear from the complaint that this lawsuit constitutes nothing more

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[9] The Commonwealth itself chose to sue the New York growers and the Virginia growers in separate actions. The Commonwealth acknowledges the problem of jurisdiction when it notes that "[w]ere the New York growers subject to the jurisdiction of the United States District Court for the Western District of Virginia, the number '787' would read '1398.'" Brief for Respondent, at 22 n.22.

[10] The pending case of *Ceferino Lopez Rivas v. Marshall*, No. 78-2175 (D.P.R., filed Nov. 9, 1979), began as a purported class action against 102 defendant apple growers. The plaintiffs subsequently filed an amended complaint which abandoned the request for class status and voluntarily dismissed the action with respect to 15 plaintiffs and 91 defendant growers. The *Lopez Rivas* case was brought by Puerto Rico Legal Services, Inc.

than an aggregation of individual claims that an indeterminate number (not exceeding 787) of Puerto Rican workers *may* have against 32 individual Virginia apple growers." Brief for Petitioners, at 24-25 (footnote omitted). The arguments against granting class certification to the workers' suits would apply with greater force to denying *parens patriae* standing to the Commonwealth in this case.

Finally, the Commonwealth makes two arguments in response to petitioners' assertion that the Employment Service Complaint System established by the U.S. Department of Labor is another remedy available to Puerto Rican workers. The Commonwealth asserts that its interest in bringing this suit is not inconsistent with the interests of the U.S. Secretary of Labor and that the Complaint System "is simply not designed to handle allegations of harmful industry-wide conduct." Brief for Respondent, at 26-27.

Regardless of whether the Commonwealth's interest is consistent with federal interests, Brief for Respondent, at 26-27, allowing the Commonwealth to proceed as *parens patriae* would certainly not be compatible with the orderly and efficient operation of the Employment Service Complaint System.[11] The regulations provide for investigation by the U.S. Department of Labor either when it has probable cause to believe that an employer has violated the terms of his temporary labor certification or it has received an employee complaint to that effect. 20 C.F.R. §§ 655.210(a) and 658.501 (1978). The regulations also specify that the state employment agency in the state where the violation allegedly occurred will initially investigate any complaint with a right of appeal to the Regional

[11] The Employment Service Complaint System was created as a result of a consent decree settling a lawsuit brought on behalf of migrant farmworkers by the Migrant Legal Action Program, Inc. against the U.S. Secretary of Labor. *NAACP, Western Region v. Brennan*, 360 F. Supp. 1006, 1020 Appendix A (D.D.C. 1973); 42 Fed. Reg. 4722 (Jan. 25, 1977).

Administrator for Employment and Training of the U.S. Department of Labor. 20 C.F.R. §§ 658.416(c) and 658.502(c) (1978). If the Commonwealth were to bring a *parens patriae* lawsuit on behalf of its citizens without allowing the Employment Service Complaint System to adjudicate the complaints, it would be circumventing the very regulatory scheme it is seeking to enforce. If the Commonwealth were to bring a *parens patriae* lawsuit after the complaints had been investigated and found to have no basis, it would be second-guessing a sister state agency and the U.S. Department of Labor and, thus, undermining the Complaint System.[12]

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[12] In the pending case of *Rios v. Donovan, supra,* the U.S. Secretary of Labor, who is a defendant, filed a Memorandum in Response to Plaintiffs' Motion for a Preliminary Injunction Against the Federal Defendants. Attached to that Memorandum was the affidavit of Kenneth Hamlett, Regional Monitor/Advocate for the Employment and Training Administration of the USDOL. In his affidavit, Mr. Hamlett stated that "Mr. Rios' complaint was one of approximately 120 complaints filed by Puerto Rican workers as a result of their experiences in the 1978 New York apple harvest . . . At the present time, all of the 120 complaints have been resolved at the State level of the administrative complaint system. *In all cases, New York State was unable to substantiate the complaints of those workers.* Upon the completion of the State's action, each of the 120 workers was advised of their right to appeal that determination to the Federal Regional Administration. Only ten workers took an appeal." (Emphasis added.)

See also Brief for MLAP, *et al.*, at 47 n.32. To the extent the Employment Service Complaint System has investigated complaints of the Puerto Rican workers and found them to be without substance, the Commonwealth's *parens patriae* suit is, in effect, complaining of the actions of the state agency which made the initial investigation and the U.S. Department of Labor. *Cf.* Brief for MLAP, *et al.*, at 35 n.25. This is made clear in the *Rios* case where the plaintiffs have charged that the U.S. Secretary of Labor and other federal officials have deprived them of their rights under the Wagner-Peyser Act, the Immigration and Nationality Act, the Civil Rights Act of 1964, and the U.S. Constitution "by failing to insure plaintiffs a fair procedure for the resolution of their complaints and by failing to accord plaintiffs substantial justice on complaints filed." *Rios v. Donovan, supra,* Second Amended Complaint ¶ 159.

The Commonwealth made virtually these same arguments in the pending case of *Juan Valderrama Rios v. Secretary of Labor Donovan*, Civ. No. 79-5711 (S.D.N.Y., filed Oct. 22, 1979). The Puerto Rico Secretary of Labor was originally named as a defendant, but the district court recently granted his motion to dismiss on the ground that the Puerto Rican plaintiffs had failed to exhaust their administrative remedies prescribed by 20 C.F.R. Part 658. *Id.*, slip opinion, at 45-47 (S.D.N.Y., Nov. 23, 1981). The Puerto Rican plaintiffs, represented by the *amicus curiae* Farmworkers Legal Services of New York, Inc., had alleged that the Puerto Rico Department of Labor had "grossly mismanaged" the placement process of Puerto Rican workers in connection with the mainland apple harvest in 1978 and 1979. *Id.*, First Amended Complaint ¶ 176. In support of the motion to dismiss, counsel for the Puerto Rico Secretary of Labor argued that

> [t]he exhaustion doctrine teaches that where—as is the case under the Wagner-Peyser Act—Congress has charged an adminitrative [sic] agency with the obligation to enforce a particular statutory scheme and where an administrative mechanism for adjudicating cases arising under that scheme has been created, that that mechanism is the exclusive method for litigating, in the first instance, claims arising under the statutory scheme. Prior resort to that administrative process is an essential prerequisite to judicial review of the plaintiff's claim.

Id., Defendant Quiros' Memorandum of Points and Authorities in Support of Motion to Dismiss or, in the Alternative, to Sever and Transfer, at 17 (July 18, 1980). The Commonwealth alternatively argued that the primary jurisdiction doctrine applied, since, if the plaintiffs were alleging violations of the Wagner-Peyser Act regulations, ". . . resolving those claims will necessarily involve . . . difficult issues of interpretation and application of the extensive regulations promulgated by the U.S. Secretary of Labor . . . [and] such issues are precisely the kind

which the U.S. Secretary of Labor has expertise in resolving. . . ." *Id.* at 20-21. If the Complaint System is capable of resolving worker complaints against the Commonwealth, it would appear to be equally capable of resolving worker complaints against employers.

The Commonwealth makes the additional argument that the Employment Service Complaint System is not designed to handle allegations of industry-wide "systemic" violations, quoting from the Brief for the Secretary of Labor as Amicus Curiae filed with the Second Circuit in the *Bramkamp* case. Brief for Respondent, at 26-27. A "pattern of misconduct," however, can only be established by first proving individual cases of misconduct, and the Employment Service Complaint System is certainly designed to investigate allegations of individual violations. Furthermore, the U.S. Department of Labor has elsewhere claimed a greater authority and responsibility than it did in its *amicus* brief to the Second Circuit. In *Chick Orchards, Inc. v. Secretary of Labor Marshall*, No. 80-0-108P (D. Maine, filed March 28, 1980), the U.S. Department of Labor argued that it had acted properly in bringing an administrative proceeding against a Maine apple grower on behalf of all its workers even though only one had filed a complaint. In its Memorandum in Support of Federal Defendant's Amended Motion for Summary Judgment, at 8-9, the U.S. Department of Labor stated that

> Once the Secretary is aware of an alleged violation of the employment service regulations, either through the filing of a formal complaint or otherwise, he is free to make full inquiry under his broad investigatory powers. Neither the Secretary's investigation nor his findings and determinations is precisely restricted to the complainant or the particularities raised in the complaint . . .
>
> The Secretary's authority to make a full inquiry and determination is necessary in order for the Department of Labor to properly discharge its responsibilities set forth in the Wagner-Peyser Act of 1933,

> as amended, 29 U.S.C. § 49 *et seq.*, to establish and maintain a national system of employment offices to serve employers and U.S. workers. . . .

The Commonwealth does not explain why it would be in a better position to enforce the U.S. Department of Labor's regulations than the U.S. Department of Labor itself. If the Commonwealth has authority to go into court and seek to enjoin violations of U.S. Department of Labor regulations, the U.S. Department of Labor certainly has such authority. *See, e.g., Western Colorado Fruit Growers Association v. Marshall*, 473 F. Supp. 693, 698 (D. Colo. 1979) (". . . the government does have an avenue of relief through the counterclaim for an injunction."). *See also NAACP, Western Region v. Brennan*, 360 F. Supp. 1006, 1013 (D.D.C. 1973) ("The power to issue and enforce the Department of Labor's rules, regulations, and standards of efficiency is 'affirmatively placed upon the Secretary of Labor' and is of 'substantive importance rather than merely procedural and administrative,' " citing 41 Op. A.G. 407, 412 (1959).).

IV. The Commonwealth Uses a Gauze of Collective Words to Mask What Is Nothing More Than An Aggregation of Individual Complaints.

Throughout its Brief, the Commonwealth employs a variety of collective words to mask what its complaint clearly reveals to be nothing more than an aggregation of individual complaints. The Commonwealth refers to actions by "the growers," Brief for Respondent, at 14, 15, 17, 21, 29, mentions the need for "a comprehensive resolution," *id.* at 10, invokes the history of legal disputes prior to 1978, *id.* at 4-5, 14-15, speaks of "industry-wide" conduct, *id.* at 7, 17, 27, talks about a "pattern of conduct," *id.* at 21, 28, refers to "systemic mistreatment of Puerto Rican workers," *id.* at 27, and mentions "the massive resistance to hiring of Puerto Rican workers," *id.* at 29.

The collective terms peppered throughout the Commonwealth's Brief, it should be noted, are not to be found in the Commonwealth's complaint.[13] Moreover, the elusive quality of these terms makes it impossible to determine exactly whom they are intended to cover. When the Commonwealth refers to "the growers" or "the East Coast growers," it is not clear whether the Commonwealth means all apple growers in the 10 East Coast states who intervened in the *Galan* case in 1975, those apple growers who employed the 613 Puerto Rican workers referred by the Commonwealth in 1976, the apple growers who hired the 93 Puerto Ricans referred by the Commonwealth in 1977, all the apple growers in the four states to which Puerto Rican workers were referred in 1978 (Virginia, New York, Maryland, and West Virginia), only the apple growers in Virginia and New York (no suit has been filed by the Commonwealth against the growers in Maryland and West Virginia as a result of the 1978 season), or only the 32 apple growers in Virginia who are defendants in this case. The complaint is clearly directed at the 32 Virginia growers to whom 787 Puerto Rican workers allegedly were referred in 1978. *See* Complaint ¶¶ 72, 74 and 76 (J.A. 27-29).

Similarly, the Commonwealth uses phrases such as "industry-wide" conduct, "patterns of conduct," "systemic mistreatment," and "massive resistance" to describe what its complaint clearly reveals to be an aggregation of individual complaints. Again, when the Commonwealth speaks of "industry-wide," it is not clear whether it is referring just to the Virginia apple growers, the Virginia and New York growers, the growers in all four states to which Puerto Ricans were referred in 1978 (Virginia, New York, Maryland, and West Virginia), or the apple growers in all 10 East Coast states (no Puerto Ricans were

[13] The only exception is the reference to the agreement between the Commonwealth Department of Labor and "east coast apple growers" in 1976. Complaint ¶ 61 (J.A. 17).

referred to any of the six New England states in 1978). If there was a "pattern of conduct" in 1978, even in the case of the 32 Virginia growers, the pattern was certainly a checkered one. *See* Brief for Petitioners, at 25-27. Only eight Virginia growers, for example, less than 25 percent of the 32 Virginia growers in this case, allegedly refused to hire some Puerto Rican workers who showed up at their orchards, an allegation which, even if true, hardly amounts to "massive resistance." [14] Brief for Respondent, at 29.

The motley nature of the allegations against the 32 Virginia apple growers does not simply present a "proof problem," as the Commonwealth contends, but manifests "the essential nature of the action." Brief for Respondent, at 28. The complaint alleges a multitude of grievances that vary from worker to worker and grower to grower. *See* Brief for Petitioners, at 25-26. The Commonwealth has expressed a desire for "a comprehensive resolution of the issues posed by this controversy," Brief for Respondent, at 10, but not all disputes lend themselves to "comprehensive resolution." The Court would dismiss out of hand an attempt by the Commonwealth to bring one lawsuit on behalf of Puerto Rican automobile owners involved in traffic accidents on the mainland or an attempt by a state to bring one lawsuit against all landlords within the state on behalf of their tenants to rectify alleged building code violations. The Commonwealth's attempt to litigate a conglomeration of employment disputes by means of a *parens patriae* lawsuit smacks of that approach, a futile search for a comprehensive resolution of

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[14] In the *Bramkamp* case, only three of the 30 New York apple grower defendants allegedly refused to hire Puerto Rican workers who showed up at their orchards. *Commonwealth of Puerto Rico ex rel. Quiros v. Bramkamp*, Civ. No. 79-0199 (S.D.N.Y., Sept. 28, 1979), *rev'd*, 654 F.2d 212 (2d Cir. 1981), *petition for cert. filed*, 50 U.S.L.W. 3302 (Aug. 20, 1981) (No. 81-361), First Amended Complaint ¶ 71. Each of those three growers are also charged with discriminating against other Puerto Rican workers who were hired by them. *Id.* ¶¶ 71-73.

many disparate individual controversies that turn on their own peculiar facts and circumstances.[15]

CONCLUSION

For the reasons stated above and in the Brief for Petitioners, the judgment of the court of appeals should be reversed.

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March 9, 1982

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[15] *Cf. Board of Supervisors of Fairfax County, Virginia v. United States*, 408 F. Supp. 556, 566 (E.D.Va. 1976), *appeal dismissed sub. nom. Board of Supervisors of Fairfax County, Virginia v. District of Columbia*, 551 F.2d 305 (4th Cir. 1977) (unpublished):

> Even if the Board of Supervisors could properly act as *parens patriae* in some instances, it could not do so to redress the constitutional torts alleged in the instant case. If the Lorton Complex is in fact operating so as to deprive Fairfax County residents of certain constitutional rights, the injury would be personal to those residents so effected [sic] rather than to any quasi-sovereign interest of the county itself. While the Board of Supervisors is statutorily empowered to abate public nuisances, it is not authorized to redress injuries of a personal nature inflicted upon its residents.

The court also noted that "to be considered public a nuisance must effect [sic] an interest common to the general public rather than peculiar to one individual. See generally, W. Prosser, The Law of Torts § 88 (4th ed. 1971). A wrong to a specific individual, however, may be remedied by an action instituted by that individual." *Id.* at 566 n.14.